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10 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA
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12 GERALD D. ENQUIST,

13 Petitioner,

14 v.

15 STATE OF WASHINGTON,

16 Respondent.

CASE NO. C12-5529 RBL-JRC

REPORT AND
RECOMMENDATION

NOTED FOR: JULY 13, 2012

17 The District Court referred this petition for a writ of habeas corpus, filed pursuant to 28
18 U.S.C. § 2254, to United States Magistrate Judge J. Richard Creatura. The authority for the
19 referral is found in 28 U.S.C. § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3
20 and MJR4. Petitioner has served his entire sentence and he has been released. He brings this
21 habeas corpus petition to challenge the constitutionality of Washington State's Sex Offender
22 Registration Act (ECF No. 1).
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1 The Court recommends that this petition be dismissed prior to service or the Court calling
2 for an answer because the Court lacks jurisdiction to consider the petition. Habeas Corpus
3 petitioners must be in custody at the time the petition is filed. The in custody requirement is
4 jurisdictional. 28 U.S.C. § 2241(c).

5 In a controlling case the Ninth Circuit examined Washington State's sex offender
6 registration act and held that sex offender registration did not satisfy the "in custody"
7 requirement for habeas corpus. Williamson v. Gregoire, 151 F.3d 1180 (9th Cir. 1998). The case
8 is controlling precedent on this issue in this Court.

9 Petitioner argues that Williamson v. Gregoire, is not binding on him because he is
10 homeless and must report weekly to the County Sheriff's Office. Petitioner is in error, the burden
11 placed on him does not prevent travel or movement. He must simply report weekly to the
12 Sheriff's Office in whatever county he is in. Washington v. Enquist, 163 Wn. App. 41, 50-51
13 (Wash. App. 2011). Petition is not in custody for the purpose of habeas corpus and the Court
14 recommends that this petition be dismissed prior to service for lack of jurisdiction.

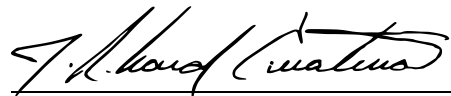
15 Certificate of Appealability

16 A petitioner seeking post-conviction relief under 28 U.S.C. § 2254 may appeal a district
17 court's dismissal of the federal habeas petition only after obtaining a certificate of appealability
18 (COA) from a district or circuit judge. A certificate of appealability may issue only if a
19 petitioner has made "a substantial showing of the denial of a constitutional right." See 28 U.S.C.
20 § 2253(c)(2). A petitioner satisfies this standard "by demonstrating that jurists of reason could
21 disagree with the district court's resolution of his constitutional claims or that jurists could
22 conclude the issues presented are adequate to deserve encouragement to proceed further."
23 Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (*citing* Slack v. McDaniel, 529 U.S. 473, 484
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1 (2000)). Pursuant to this standard, this Court concludes that petitioner is not entitled to a
2 certificate of appealability with respect to this petition.

3 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
4 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
5 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
6 review by the district judge. See 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
7 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on July
8 13, 2012, as noted in the caption.

9 Dated this 22nd day of June, 2012.

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12 J. Richard Creatura
13 United States Magistrate Judge
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